

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANGELIQUE CRUZ QUIMSON; ZENAIDA)
 DELOS ANGELES,)

Case No.: 2:12-cv-00201-GMN-PAL

Plaintiffs,)

vs.)

ORDER

CTX MORTGAGE COMPANY, LLC, et al.,)

Defendants.)

Before the Court is the Motion to Dismiss (ECF No. 5) filed by Defendants Bank of America, N.A., The Bank of New York Mellon, ReconTrust Company, N.A., and Mortgage Electronic Registration System, Inc. Plaintiffs, who are representing themselves pro se, have not filed a Response to the Motion to Dismiss. Defendants have, however, filed a Notice of Non-Opposition (ECF No. 14). For the reasons that follow, the Motion to Dismiss will be granted, and Plaintiffs' Complaint will be dismissed.

I. BACKGROUND

This lawsuit was originally filed on February 8, 2012 in this Court. Plaintiffs' Complaint alleges a number of causes of action against Defendants related to the foreclosure proceedings that were initiated against Plaintiffs' property.

On March 19, 2012, Defendants filed a Motion to Dismiss (ECF No. 5). Pursuant to D. Nev. R. 7-2(b), Plaintiffs had fourteen days after service of the Motion to file a Response; therefore, Plaintiffs had until April 5, 2012 to file a Response. Not only did Plaintiffs fail to meet this deadline, Plaintiffs have failed to file any Response at all.

II. DISCUSSION

Local Rule 7-2 (d) provides that "[t]he failure of an opposing party to file points and

1 authorities in response to any motion shall constitute a consent to the granting of the motion.” D.
2 Nev. R. 7-2(d). As the Ninth Circuit has held, “[f]ailure to follow a district court’s local rules is
3 a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *see, e.g.*,
4 *Roberts v. United States of America*, No. 2:01-cv-1230-RLH-LRL, 2002 WL 1770930 (D. Nev.
5 June 13, 2002). However, before dismissing a case for failing to follow local rules or for failure
6 to prosecute, the district court must weigh five factors: “(1) the public’s interest in expeditious
7 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to
8 defendants/respondents; (4) the availability of less drastic sanctions; and (5) the public policy
9 favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir.
10 2002).

11 Under this test, “the public’s interest in expeditious resolution of litigation always favors
12 dismissal.” *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999). Also, the Court’s
13 need to manage its docket is manifest. *See State Farm Mut. Auto. Ins. Co. v. Ireland*, No. 2:07-
14 cv-01541-RCJ-RJJ, 2009 WL 4280282 (D. Nev. Nov. 30, 2009). Further, Plaintiffs’ failure to
15 timely respond to Defendants’ motion has unreasonably delayed the resolution of this case, and
16 such unreasonable delay “creates a presumption of injury to the defense.” *Henderson v. Duncan*,
17 779 F.2d 1421, 1423 (9th Cir. 1986). Less drastic sanctions available to the Court include
18 dismissal of Plaintiffs’ Complaint without prejudice.

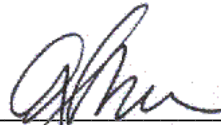
19 The fifth factor also does not weigh in favor of Plaintiffs because it is not clear that this
20 case was likely to be decided on the merits. Plaintiffs brought the lawsuit in this Court, and have
21 failed to take any action after their Complaint was filed. Accordingly, the Court concludes that
22 consideration of the five factors discussed above weighs in favor of dismissal. However, in
23 consideration of Plaintiffs’ pro se status, the Court will dismiss Plaintiffs’ Complaint without
24 prejudice.

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CONCLUSION

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 5) is **GRANTED**. Plaintiffs' Complaint is **DISMISSED without prejudice**. The Clerk shall enter judgment accordingly.

DATED this 10th day of April, 2012.



Gloria M. Navarro
United States District Judge